

General Services Administration

552.246-17

under item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238-75. If the price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

(c) *Effective Dates.* The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238-75.

(d) *Electronic File Updates.* The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINS, the Contractor shall obtain the contracting officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the contracting officer as set forth in the Price Reductions clause at 552.238-75.

(e) *Amendments to Paper Supply Schedule Price Lists.*

(1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii) Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February—April, and every 3 month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.

(2) At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic document. In addition, the Contractor shall submit two copies of each supplement to the contracting officer, and one copy to the FSS Schedule Information Center.

(End of clause)

Alternate I (Sep 1999). As prescribed in 543.205(b), substitute the following paragraph (d) for paragraph (d) of the basic clause:

(d) *Electronic File Updates.* The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINS, the Contractor shall obtain the contracting officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions and corrections without prior approval. However, the Contractor shall notify the contracting officer as set forth in the Price Reductions clause at 552.238-75.

[64 FR 37229, July 9, 1999, as amended at 65 FR 41379, July 5, 2000]

552.246-17 Warranty of Supplies of a Noncomplex Nature

As prescribed in 546.710(a), insert the following clause:

WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE (DEC 1990) (DEVIATION FAR 52.246-17)

(a) *Definitions.* "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include "data."

(b) *Contractor's obligations.*

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____ *

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with the requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such applies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, the Contractor shall be responsible for all costs attendant to the return, correction or replacement of the non-conforming supplies. Any removal in connection with the above shall be done by the Contractor at its expense. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.*

(1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause with _____. This notice shall contain information concerning the deficiencies found, the location of the nonconforming supplies, and the quantity involved.

(2) Within a reasonable time after the notice, the Contracting Officer may either—

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances. When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

(3)(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; *provided*, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Con-

tracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.

(C) Require the Contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement. All costs incurred by the Government in returning the nonconforming supplies, including costs to the freight carrier resulting from the Contractor's refusal to accept their return, shall be for the Contractor's account.

(4)(i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor—

(A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price for all nonconforming supplies, including batch or lot materials which either have been consumed or other disposition has been made. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may return the supplies for screening and correction or replacement under subparagraph (c)(3)(ii)(D) above; store the nonconforming supplies for the Contractor's account; sell the nonconforming supplies to the highest bidder on the open market and apply the proceeds against the accumulated storage and other costs, including the cost of the sale; or otherwise dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the

reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(6) Unless otherwise provided, this warranty is applicable both within and outside the continental limits of the United States.

(7) In addition to other marking requirements of this contract, the Contractor shall stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The marking should briefly include (i) a statement that the warranty exists, (ii) the substance of the warranty, (iii) its duration, and (iv) whom to notify if the supplies are found to be defective.

(End of clause)

**State the specific period of time after delivery or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable event or periods of time.*

***Insert specific period of time; e.g., "45 days from the last delivery under this contract," or "45 days after discovery of the defect." The number of days specified shall be no less than 30.*

Alternate I (DEC 1990). As prescribed in 546.710(a)(1), substitute the following for paragraph (b)(1) of the basic clause and delete paragraph (b)(4) of the basic clause.

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____* all supplies furnished—

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are within the variations permitted by the contract, and are of an even kind, quality, and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as the contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

Alternate II (DEC 1990). As prescribed in 546.710(a)(2), substitute the following paragraph for paragraph (b)(1) of the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____* all supplies furnished—

(i) Conform to the specifications except that in the case of solvent systems, the viscosity may exceed the specified maximum by 10 Kneb Units, unless otherwise specified elsewhere in this contract; and

(ii) Are suitable for their intended purpose as stated in this contract.

Alternate III (DEC 1990). As prescribed in 546.710(a)(3), substitute the following for paragraph (b)(1) of the basic clause, redesignate paragraph (c) of the basic clause as paragraph (d), and add the following as paragraph (c) in the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____*, beginning with the first day of the first full month following the month of manufacture marked on the container, all supplies furnished retain their original characteristics to the extent that the supplies remain suitable for the intended use as stated in this contract (i) under actual application conditions or (ii) when tested in accordance with requirements stated elsewhere in this contract.

(c) *Government surveillance and testing.*

(1) During this period, surveillance will be maintained on supplies warehoused in Government facilities; and the supplies will be tested periodically to determine their suitability for intended use. Sampling for surveillance testing will be in accordance with Military Standard No. 105, and such testing will be made after NORMAL MIXING, STIRRING, OR SHAKING, in accordance with directions either furnished with the supplies or as shown in the applicable specifications.

(2) Surveillance testing will be based on storage stability requirements set forth in the contract specification, or purchase description on the basis of salient characteristics (e.g., viscosity or sag flow, curing time, strip adhesion or tensile shear, etc.) established by GSA as appropriate to determine suitability for intended use. In the case of brand name items not covered by detailed purchase descriptions, surveillance testing may be based on salient characteristics included in the manufacturer's data sheets. If storage stability requirements showing allowable variations are not included in applicable specifications or elsewhere in the contract, material will be considered suitable for intended use if the salient characteristics vary not more than 20 percent from the

originally specified values (i.e., those applicable to acceptance testing of the supplies) for noncritical end-use items, and not more than 10 percent for critical end-use items.

552.246-70 Source Inspection by Quality Approved Manufacturer.

As prescribed in 546.302-70, insert the following clause:

SOURCE INSPECTION BY QUALITY APPROVED MANUFACTURER (SEP 1999)

(a) Inspection system and inspection facilities.

(1) The inspection system maintained by the Contractor under the Inspection of Supplies—Fixed Price clause (FAR 52.246-2) of this contract shall be maintained throughout the contract period and shall comply with all requirements of editions in effect on the date of the solicitation of either Federal Standard 368 or the International Organization for Standardization (ISO) Standard 9001 (ANSI/ASQC Q 91) (Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation and Servicing), or ISO Standard 9002 (ANSI/ASQC Q 92) (Quality Systems—Model for Quality Assurance in Production and Installation). The ISO 9000 family of standards is a set of worldwide standards used to document, implement and demonstrate quality assurance systems. When using the ISO option the Contractor's quality system must be registered by a third party registrar accredited by either the Registrar Accreditation Board (RAB) or an organization recognized as equivalent. A written description of the inspection system shall be made available to the Government before contract award. The Contractor shall immediately notify the Contracting Officer and the designated GSA quality assurance office of any changes made in the inspection system during the contract period. As used herein, the term "inspection system" means the Contractor's own facility or any other facility acceptable to the Government that will be used to perform inspections or tests of materials and components before incorporation into end articles and for inspection of such end articles before shipment. When the manufacturing plant is located outside of the United States, the Contractor shall arrange delivery of the items from a plant or warehouse located in the United States (including Puerto Rico and the Virgin Islands) equipped to perform all inspections and tests required by the contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(2) In addition to the requirements in Federal Standard 368, ISO 9001 or ISO 9002 records shall include the date when inspection and testing were performed. These

records shall be available for (i) 3 years after final payment; or (ii) 4 years from the end of the Contractor's fiscal year in which the record was created, whichever period expires first.

(3) Offerors are required to specify, in the space provided elsewhere in this solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(4) Within 10 calendar days after receipt of the written notice of award, the Contractor shall provide the Administrative Contracting Officer with the name of the individual and an alternate that will be responsible for inspecting each shipment under this contract.

(b) Inspection and receiving reports.

(1) For each shipment released, one of the officials named by the Contractor under paragraph (a)(4) above shall sign a Quality Approved Manufacturer Certificate certifying that supplies have been inspected and found to comply with contract requirements. The certification shall read as follows:

"I certify that all items in this shipment have been listed herein, and have been inspected and found to comply with all requirements of the contract."

Signature of Certifying Official

(2) For shipments made to military facilities, the Contractor shall prepare and distribute the DD Form 250, Material Inspection and Receiving Report, or computer formatted equivalent of the form not later than the close of business the workday following shipment. The certification above shall be placed in block 16 on this form. The Contractor will be provided a supply of the DD Form 250 with complete instructions for preparation and distribution.

(3) For shipments made to civilian facilities *only*, the Contractor shall prepare and distribute not later than the close of business the workday following shipment a certification of inspection and conformance for the identified items, in accordance with instructions furnished at the time of award. The Contractor may furnish the requisite information on the DD Form 250 or computer formatted equivalent, company letterhead, or invoice document.

(c) Inspection by Government personnel.

(1) Although the Government will normally rely upon the Contractor's certification as to the quality of supplies shipped, it reserves the right under the Inspection of Supplies—Fixed Price clause to inspect and test all supplies called for by this contract, before acceptance, at all times and places, including the point of manufacture. When the Government notifies the Contractor of its intent to inspect supplies before shipment, the Contractor shall notify or arrange for subcontractors to notify the designated